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1912 (Acts 1912, c. 348), construed the statutes as amended, and further prescribed how the treasurer's commissions should be determined. The commissions received by the county treasurer for the years 1909 and 1910 were less than the amount to which he was entitled under the Code as construed by the subsequent act, although some of the commissions received were unauthorized. Held that, as the act of 1912 applied, the county could not recover back the unauthorized commissions, and at the same time defeat the treasurer's claim for additional commissions; hence the fact that the treasurer was entitled to greater commissions than he received was a good defense of action by the county.

[Ed. Note.—For other cases, see Counties, Cent. Dig. §§ 104-113, 115-117; Dec. Dig. § 70½.*]

Appeal from Circuit Court, Hanover County.

Bill by the Board of Supervisors of Hanover County against H. Guy Vaughan, County Treasurer. From a decree for defendant, complainant appeals. Affirmed.

Geo. P. Haw, of Richmond, for appellant.

Hill Carter, of Richmond, for appellee.

NORFOLK & W. RY. CO. et al. v. PERDUE.

Jan. 12, 1915.

[83 S. E. 1058.]

1. Master and Servant (§ 302*)—Misconduct of Servant—Liability of Master to Third Persons.—Where a gatekeeper in a railroad station aided a special officer in unlawfully arresting one entering the station to board a train, the railroad company was liable for the act of the gatekeeper, though not for the act of the officer.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 1217-1221, 1225, 1229; Dec. Dig. § 302.* 9 Va.-W. Va. Enc. Dig. 728; 15 Va.-W. Va. Enc. Dig. 662.]

2. Appeal and Error (§ 1064*)—Harmless Error—Errors Not Affecting Result.—Where the court charged for defendant on the case as originally presented, but plaintiff by leave amended his declaration, and thereafter established a case against defendant under the amendment, any error prior to the amendment was immaterial.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4219, 4221-4224; Dec. Dig. § 1064.* 1 Va.-W. Va. Enc. Dig. 601; 14 Va.-W. Va. Enc. Dig. 96; 15 Va.-W. Va. Enc. Dig. 70.]

3. Dismissal and Nonsuit (§ 26*)—Tort—Nonsuit as to One Defendant—Judgment.—Where, in an action against a railroad company and

* For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

an individual for tort, the jury assessed separate damages against each, the company could not complain of a judgment for the amount assessed against it, on plaintiff taking a nonsuit as against the individual defendant.

[Ed. Note.—For other cases, see Dismissal and Nonsuit, Cent. Dig. §§ 46, 48-59; Dec. Dig. § 26.* 4 Va.-W. Va. Enc. Dig. 687; 14 Va.-W. Va. Enc. Dig. 340; 15 Va.-W. Va. Enc. Dig. 293.]

4. Trial (§ 252*)—Instructions—Conformity to Issues.—Where, in an action against a carrier and a special police officer for unlawfully arresting a passenger at a station, the evidence clearly showed that an employee at the station assisted the officer in making the arrest, and there was no suggestion that the employee did not act within the scope of his employment, an instruction authorizing recovery if the employee assisted in the unlawful arrest was not objectionable for failing to require that the employee must have been at the time engaged about the business of the carrier.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 505, 596-612; Dec. Dig. § 252.* 7 Va.-W. Va. Enc. Dig. 718; 14 Va.-W. Va. Enc. Dig. 563; 15 Va.-W. Va. Enc. Dig. 513.]

5. Trial (§ 260*)—Requested Instructions—Instructions Covered by Others Given.—It is not error to refuse a requested charge sufficiently covered by a charge given.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 651-659; Dec. Dig. § 260.* 7 Va.-W. Va. Enc. Dig. 742; 14 Va.-W. Va. Enc. Dig. 565; 15 Va.-W. Va. Enc. Dig. 521.]

6. Trial (§ 260*)—Requested Instructions—Instructions Covered by Others Given.—Where, in an action against a carrier and a police officer for unlawful arrest, the court charged that if plaintiff entered the station where the arrest was made to board a train, and had a ticket, he was a passenger, and the carrier was required to treat him respectfully, and if the officer arrested plaintiff when committing no offense, and an employee of the carrier assisted in the arrest, the carrier was liable, refusal to charge that the carrier was not responsible for the acts of the officer was not erroneous, because sufficiently covered by the charge.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 651-659; Dec. Dig. § 260.* 7 Va.-W. Va. Enc. Dig. 742.]

7. Appeal and Error (§ 1050*)—Harmless Error—Erroneous Admission of Evidence.—In an action against a carrier and a special police officer for unlawfully arresting a passenger, with the assistance of a gatekeeper at the station where the arrest was made, error in admit-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

ting in evidence a rule regulating the duties of station masters was not prejudicial to the carrier.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1068, 1069, 4153-4157, 4166; Dec. Dig. § 1050.* 1 Va.-W. Va. Enc. Dig. 592; 14 Va.-W. Va. Enc. Dig. 92; 15 Va.-W. Va. Enc. Dig. 68.]

8. Pleading (§ 237*)—Trial Amendments—Power of Court.—Code 1904, § 3384, authorizing amendments to conform to the proof, if substantial justice will be promoted and the adverse party not prejudiced, is to be liberally construed, and the court may allow plaintiff, suing a railroad company and a special police officer for unlawful arrest, to amend his declaration so as to state a cause of action on the theory that an employee of the company assisted the officer in making the arrest, while the original declaration proceeded on the theory that the company was liable for the acts of the officer.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 603-619; Dec. Dig. § 237.* 1 Va.-W. Va. Enc. Dig. 319; 14 Va.-W. Va. Enc. Dig. 43; 15 Va.-W. Va. Enc. Dig. 41.]

9. Pleading (§ 380*)—Amendments—Evidence.—The court permitting plaintiff to amend his declaration, may also permit him to introduce evidence in support of the declaration as amended.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 1237, 1239-1252; Dec. Dig. § 380.* 1 Va.-W. Va. Enc. Dig. 319; 14 Va.-W. Va. Enc. Dig. 43; 15 Va.-W. Va. Enc. Dig. 41.]

Error to Law and Chancery Court of City of Roanoke.

Action by William H. Perdue against the Norfolk & Western Railway Company and another. There was a judgment for plaintiff against the railroad company only, and said company brings error. Affirmed.

McCormick & Smith, of Roanoke, for plaintiff in error.

Hairston & Willis, of Roanoke, for defendant in error.

COMMONWEALTH *v.* ROUND MOUNTAIN MINING & MFG.
CO.

Jan. 12, 1915.

[83 S. E. 1061.]

Appeal and Error (§ 15*)—Separate Causes—Single Writ of Error—Dismissal.—Where the owner of land in each of three years filed an application to correct assessments on it, and the separate proceedings were removed by separate orders to the lower court, which decreed relief to the owner, rendering separate judgments in each of the cases, in which the commonwealth made separate defenses and took

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.